



Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

March 9, 1982

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ARIZONA ATTORNEY GENERAL

Mr. John R. McDonald  
DeConcini, McDonald, Brammer,  
Yetwin & Lacey, P.C.  
240 North Stone Avenue  
Tucson, Arizona 85701

Re: 182-029 (R82-012)

Dear Mr. McDonald:

Pursuant to A.R.S. § 15-253.B, we decline to review your opinion dated January 27, 1982, to the Superintendent of the Flowing Wells Public Schools concerning whether the school district may pay tuition and a subsistence allowance to teachers who take an intensive summer course to qualify them to teach mathematics.

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General

BC:CWL:lm

*Handwritten signature*

DeCONCINI McDONALD BRAMMER YETWIN & LACY, P.C.

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\*PHOENIX OFFICE

January 28, 1982

EDUCATION OPINION  
ISSUE NO LATER THAN  
4-2-82.

2-4-82  
LOWE

82-012

The Honorable Robert K. Corbin  
Attorney General  
State Capitol  
Phoenix, Arizona 85017

Re: Payment of Tuition and Subsistence  
for Summer School Program

Dear Mr. Corbin:

Enclosed is a copy of an opinion letter which is being submitted for review by your office pursuant to A.R.S. § 15-252B.

Yours truly,

DeCONCINI McDONALD BRAMMER  
YETWIN & LACY, P.C.

*Handwritten signature of John R. McDonald*  
John R. McDonald

JRM:jgh

Enclosure

DECONCINI McDONALD BRAMMER YETWIN & LACY, P.C.

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\*PHOENIX OFFICE

January 27, 1982

EDUCATION OPINION

ISSUE NO LATER THAN

2-4-82  
LOWE

R82-012

William K. Poston, Jr., Superintendent 4-2-82  
FLOWING WELLS PUBLIC SCHOOLS  
1444 West Prince Road  
Tucson, Arizona 85705

Dear Dr. Poston:

You have requested an opinion on a program for increasing the number of qualified math teachers in Flowing Wells School District. The District would pay tuition and a subsistence allowance to Flowing Wells teachers who take an intensive summer course at Northern Arizona University to qualify them to teach mathematics.

I. Facts

Flowing Wells Public Schools has, for a number of years, experienced extreme difficulty in recruiting qualified math teachers.

The problem of finding a sufficient number of math teachers to teach in public schools is one being experienced nationwide. The major factor contributing to this shortage is the availability of higher paying employment in the private sector, which deters college students in math and allied fields from teaching. With the increase in the number of jobs in the computer science and other math technologies, the shortage will likely become more severe for school districts, even those offering only a basic program.

Northern Arizona University offers an intensive summer program during which otherwise qualified, and certified teachers in Arizona are taught courses which allow them to become certified and qualified to teach math. The question is whether the Governing Board may expend District funds to pay for the tuition of the teachers participating in this intensive course, and a subsistence allowance to the teachers while at Northern Arizona University attending classes. Without some program similar to this, Flowing Wells School

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District may have to cancel advanced math classes because there is not a sufficient number of qualified math teachers to teach all of the courses the Governing Board feels are needed in the curriculum.

The teachers participating in the summer program would sign an agreement to repay the District if they voluntarily left the District within five years of completing the course.

## II. The Law

A.R.S. §15-341 states the mandatory powers and duties of the Governing Board. Among these duties is the requirement that the Governing Board maintain the schools and manage and control school property within the District. While the Governing Board's power and authority to act on behalf of the District is broad within those areas expressly or impliedly granted to the Governing Board, because it is a creature of the legislature the Governing Board has no powers other than those granted, and especially none where the power is expressly or impliedly prohibited to the Governing Board. See, School District No. 69 v. Altherr, 10 Ariz.App. 333, 338, 458 P.2d 537, 542 (1969); Olmsted & Gillelen v. Hesla, 24 Ariz. 546, 551, 211 P. 589, 590 (1922). The question is whether payment of tuition and a subsistence allowance constitute a gift of public funds prohibited by Article IX, Section 7 of the Arizona Constitution. This provision of the constitution has been discussed in a number of cases and opinions of the Attorney General.

The most often cited and relied on case concerning a school district's obligations is Prescott Community Hospital Commission v. Prescott School District No. 1, 57 Ariz. 492, 115 P.2d 160 (1941). In Prescott Community Hospital, the Arizona Supreme Court was asked to consider the validity of a lease, by the Prescott School District to the hospital, of school property for an annual rental of one dollar. It was apparent to the court that the annual rental to be charged was well under the market value of the property. The Supreme Court said:

School districts are created by the state for the sole purpose of promoting the education of the youth of the state. All of their powers are given them and all the property which they own is held

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by them in trust for the same purpose, and any contract of any nature which they may enter into, which shows on its fact that it is not meant for the educational advancement of the youth of the district, but for some other purpose, no matter how worthy in its nature, is ultra vires and void.

57 Ariz. at 494, 115 P.2d at 161.

In 73 Op. Att'y Gen. 1C, the Attorney General concurred in the opinion of the Mojave County Attorney that the payment of the tuition of teachers attending summer school was not legal. This conclusion was based on the premise that the pay scale of the district took into consideration educational achievements, and any further incentive was a gift.

In 80 Op. Att'y Gen. Op. 126C, the Attorney General issued an opinion which considered the ability of the governing board to extend the number of days granted for personal leave in teacher contracts once the contracts had been signed. The opinion was that this would constitute a gift of public funds because personal leave days are a fringe benefit permitted by the Constitution because they are consideration for the future performance of the contract. Once the teachers became obligated to perform their duties under the contracts, any increase in fringe benefits is a gift.

In 57 Op. Att'y Gen. 84 (1957), an expenditure by the Department of Public Assistance for Educational Training Services incurred by employees of the District was questioned. The Attorney General wrote that the Arizona Supreme Court has been very liberal in construing the term public purpose. The public body having the responsibility to disburse the funds is authorized and given broad discretion to determine what is a public purpose. The courts should not presume to substitute their judgment for that of the public body. See, 57 Op. Atty. Gen. 84 (1957). Payment to the employee of his or her salary during the period in which he or she attended classes was not a gift of public funds because the agency's express purpose was to benefit the public by increasing the competency of its employees.

In 73 Op. Att'y Gen. 17C, the Attorney General concurred in an opinion by the Cochise County Attorney that payment of

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tuition for summer school courses was acceptable. The practice was declared legal because the salary scale of the school district took into consideration whether the grant had been paid. The opinion distinguished other opinions that might be viewed as in conflict on the basis of the existence of the integrated salary and educational grant schedule.

In 80 Op. Att'y Gen. 72C, the Arizona Attorney General was asked to review an opinion given to a school district that the Governing Board could approve the use of a district swimming pool by the public during nonschool hours. The Attorney General was of the opinion that this did not constitute a gift of public funds and that the district could even hire a lifeguard, so long as only a portion of the lifeguard's duties were related to the use by the public. The expenditure was valid because it provided a service of educational value to the youth of the district.

In 1980, the governing board of a Northern Arizona school district requested an opinion of the Attorney General concerning the validity of a payment to Northern Arizona University for services involved in teaching a course at the school district which had the effect of upgrading the certificates of several teachers. 180 Op. Att'y Gen. 219 states that the expenditure was valid even though the payment for the services benefited the individual teachers, because these benefits were merely incidental to the purpose of the expenditure which was to increase the district's ability to offer special education courses. Because the central concern was for better education within the school district, the expenditure did not constitute a gift of public funds.

### III. Conclusion

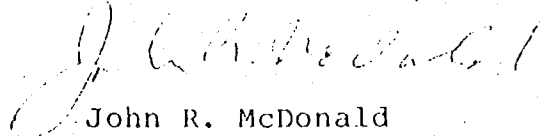
The cases and Attorney General's opinions taken together set forth a logical and sensible test for the validity of such expenditures. If they are primarily for the benefit of the District with only incidental benefits to the individual, they are valid, if they amount to a fringe benefit to the teacher for work the teacher is already obligated to do, they are invalid. In the instant case, the purpose is clearly to benefit the District and the expenditure is valid. This

Dr. Poston  
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opinion is being submitted to the Attorney General for review  
pursuant to A.R.S. §15-253D.

Sincerely,

DeCONCINI McDONALD BRAMMER  
YETWIN & LACY, P.C.



John R. McDonald

JRM:rms  
cc: Hon. Robert K. Corbin